

**Golden Age Properties Management Company
d/b/a Sparta Health Care Center and United
Food and Commercial Workers, Local Union
1996. Case 10-CA-30030**

April 24, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS

Pursuant to a charge filed on March 12, 1997, the General Counsel of the National Labor Relations Board issued a complaint on March 19, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 10-RC-14681. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On April 7, 1997, the General Counsel filed a Motion for Summary Judgment. On April 8, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to the election. In addition, the Respondent asserts as an affirmative defense that the Regional Director improperly assigned the same person who served as the hearing officer in the representation proceeding to serve as counsel for the General Counsel in the instant unfair labor practice proceeding. The Respondent contends that the participation of the hearing officer as counsel for the General Counsel in this case is procedurally improper and violates the provisions of Section 554(d) of the Administrative Procedure Act (APA) which prohibit agency employees who perform investigative or prosecutorial functions in one case from participating or advising in the decision in that or a related case.¹

All representation issues raised by the Respondent were or could have been litigated in the prior represen-

tation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that no issue warranting a hearing is raised by the Respondent's additional contention that the designation of the hearing officer in the prior representation proceeding to serve as counsel for the General Counsel in the instant refusal-to-bargain proceeding was procedurally improper and violated Section 554(d) of the APA. The Board has rejected similar contentions in prior cases. See *Terrace Gardens Plaza*, 315 NLRB 749 fn. 1 (1994), *enfd.* 91 F.3d 222 (D.C. Cir. 1996). Further, Section 554 of the APA specifically states that the provisions of that section do not apply to a case of adjudication "to the extent there is involved . . . the certification of worker representatives." 5 U.S.C. § 554(a)(6). Thus, Section 554(d) is clearly inapplicable to the instant case because the related case here involved such a certification proceeding.

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is, and has been at all times material, a Georgia corporation with an office and place of business located in Sparta, Georgia, where it operates a nursing home providing inpatient medical and professional care services for live-in patients. During the 12-month period preceding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$100,000 and purchased and received goods and services in excess of \$5000 directly from suppliers located outside the State of Georgia.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held March 7, 1996, the Union was certified on January 28, 1997, as the exclu-

¹Sec. 554(d) of the APA, 5 U.S.C. § 554(d), states in relevant part:

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings.

sive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees employed by the Respondent at its Sparta, Georgia facility, but excluding all confidential employees, professional employees, managerial employees, guards and supervisors, including LPN charge nurses, as defined by the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About January 31, 1997, the Union requested the Respondent to bargain and, since February 28, 1997, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after February 28, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Golden Age Properties Management Company d/b/a Sparta Health Care Center, Sparta, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers, Local Union 1996 as the exclusive bargaining representative of the employees in the following appropriate bargaining unit.

All full-time and regular part-time employees employed by the Respondent at its Sparta, Georgia facility, but excluding all confidential employees, professional employees, managerial employees, guards and supervisors, including LPN charge nurses, as defined by the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the above-appropriate bargaining unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Sparta, Georgia, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 10 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 12, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Food and Commercial Workers, Local Union 1996 as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

All full-time and regular part-time employees employed by us at our Sparta, Georgia facility, but excluding all confidential employees, professional employees, managerial employees, guards and supervisors, including LPN charge nurses, as defined by the Act.

GOLDEN AGE PROPERTIES MANAGEMENT COMPANY D/B/A SPARTA HEALTH CARE CENTER